our institutions are built—this Court must say, in fidelity to the oaths it has sworn, that it cannot be done.

DECREE OF THE COURT.—And now, to wit: May 22d, 1862, this cause having been argued by counsel, and fully considered by the Court, the motion made on behalf of the contestants to quash the *certiorari* is overruled and dismissed, and it is ordered and adjudged that the decree of the Court of Quarter Sessions of the county of Luzerne, made on the sixth day of January, 1862, be reversed, annulled, and taken for nought, and it is here determined and decreed, that the election and return of Ezra B. Chase to the office of District Attorney in and for the said county of Luzerne, at the general election on the second Tuesday of October last, was not undue or false, as charged by said contestants, but that the said Ezra B. Chase was duly elected to said office, and is entitled, upon taking the proper oath, to all the rights, privileges, and emoluments thereof.

It is further considered and certified, that the complaint of said contestants was not without probable cause, and it is therefore decreed, that the county of Luzerne pay the costs of this contested election.

LOWRIE, C. J., took no part in the decision, having been absent at the time of the argument, on account of death in his family.

THOMPSON, J., dissenting.

Supreme Court of Pennsylvania.—At Nisi Prius, in Equity. November Term, 1862.

Before Justices THOMPSON and WOODWARD.

WILLIAM P. DENNIS *vs.* HENRY ECHARDT.

Where a lawful business, such as that of tinsmith and sheet-iron worker, is carried on at unseasonable hours to the annoyance and discomfort of neighbors, and until it becomes a nuisance, equity will interfere by injunction to restrain it.

Motion for special injunction.

Peter McCall, Esq., appeared for complainant. The defendant was not represented either in person or by counsel.

The opinion of the Court was delivered by

THOMPSON, J.—It is essential in all civilized communities that the individual dominion of property should be sedulously restrained within the principle that each owner should so use it as not to injure his neighbor, "*Sic utere tuo ut alienam non lædes.*" The principle is necessary to preserve the safety and health, as well as morality, of the people, and hence a power must exist somewhere to enforce it. If this were not so, unwholesome establishments, filthy styes, and distracting machinery might and would be erected at the very doors of private dwellings, to the destruction of all peace, health, and comfort of the inmates. A community in which such privileges should exist could not long exist as civilized.

The Courts, through the medium of their common law forms, can only act indirectly for the suppression of such evils by the imposition of damages for injuries already done, leaving, of course, the cause still in existence. No one can well doubt that where there is a case for damages the establishment is a nuisance; and all will readily agree that to leave it in full operation to breed disease, as well as future lawsuits, is to have attempted redress by a very inadequate remedy.

The case in hand is the shop of a tinsmith and sheet-iron worker, who, it seems, has erected his shop, a very thin, loose building of boards, some eight feet from the back building and sleeping-rooms of the complainant, and there carries on work, generally beginning in the morning before or by daylight, and resuming it again in the evening at or about 8 o'clock P. M., and keeping it up till 11 o'clock at night, having generally employment elsewhere during the day. The noise of the hammering and pounding in such an establishment, we well know, is usually very great, and the affidavits describe it as intolerable in this instance, so much so that the complainant and his family can scarcely hear each other converse; have been obliged to abandon their chambers next to the shop, and are every night and morning deprived of their rest by the persistent hammering of the defendant.

The complainant alleges that he has appealed in vain to him to abstain from his disturbing noises in the mornings and evenings; that, although sickness and death were in the house, he has disregarded his appeals. So, too, he disregarded the notice of an intended application for a special injunction given to him in this case, and leaves us without explanation of his conduct or denial of the facts alleged. Taking, then, these facts before us as true—for no one disputes them—can he be restrained from the exercise of his trade on his own premises, although it be noisy?

I will, at this time, only examine the main questions of law involved in this case, so far as may be necessary to an understanding of the decision which may be made under the present aspect of the case.

The first thing to be thought of is, whether any decree, preliminary or otherwise, can be made without a trial at common law, and a verdict settling the fact of a nuisance on account of the manner in which the defendant carries on his business. The object of a trial we may remember, however, is to settle the right where it is in dispute, but we have, at this moment at least, no disputed fact before us. The defendant interposes neither fact nor argument against the present motion, and we are to decide on the case before us on the sufficiency of the facts to establish the ground of complaint—viz., that the noises emanating from the defendant's shop, at unseasonable hours especially, and at all hours, is a nuisance. That the affidavits establish this I have no doubt, and also that these noises are a nuisance, if a nuisance can be created by such means.

The business of a tin and sheet-iron manufacturer is lawful; his shop is not a nuisance *per se*. This must be conceded. If it were, no doubt could exist in regard to the remedy by injunction. Wherein consists the difference between a nuisance *per se* and where a lawful pursuit is so carried on as to become a nuisance? It is not, I apprehend, in the remedy, but only in the proof of it. That once established, either by non-denial, trial at law, or otherwise, it falls into the same current of remedy in chancery as if it were a nuisance *per se*. We have many cases in the books, English

and American, of recoveries against lawful establishments, manufactories and the like, on account of annoyances from noises, &c. Such recovery could only be had on the ground of nuisance. In *Gill* vs. *Bradley*, 1 Lutwytch 29, was a recovery against a blacksmith on account of the noises *incident* to his business. *Mumford and Others* vs. *The Wolverhampton Railway Company*, 1 Hurl. & Norm. 34, was on account of a steam-boiler shop.

In *Davidson* vs. *Isham*, 1 Stock. R. 186, Chancellor WILLIAMSON expressed freely his opinion as to noises from manufacturing establishments and shops in the heart of a city becoming private nuisances, and liable to be restrained and controlled by proceedings in Chancery. *Fish* vs. *Dodge*, 4 Denio 311, was a case against a steam-engine factory, and it was fully agreed that a recovery might be had on account of noises. So in *Dargan* vs. *Waddell*, 9 Iredell, N. C. Rep. 244, damages were allowed against the owner of a stable on account of the noise made by horses stamping in the night-time. These cases suffice to show that there is no exemption because the business may be lawful, if its exercise works harm or injury to others.

We have often held that repeated acts of trespass amounting to a nuisance as to a private right, may be enjoined in Pennsylvania. *Scheetz's Appeal*, 11 Casey 88, and cases there cited.

But this is only when there is no adequate remedy at law. I cannot doubt that a constant annoyance, which at law *cannot* be abated, is never remedied by damages. The loss of health and sleep, the enjoyment of quiet and repose, and the comforts of home, cannot be restored or compensated in money; it may afford consolation, but it does not remedy the evil, if that goes on, to be paid for by instalments. The law operates on the past only, while equity can and will act on the present and the future, will abate the nuisance itself, and restore the injured party to his rights. In this case a suit or suits would not be an adequate remedy for the evils complained of, in my opinion.

But we should not interfere by preliminary injunction, except in cases of irreparable mischief or injury. Have we not such a case here? It may be asked if the mischief is not irreparable which entails the want of health as a consequence of annoyances.

A chancellor does not wait till noisome trades and unwholesome gases kill somebody before he proceeds to restrain; or that the threatened destruction of pictures, charts, &c., has taken place. His remedy is preventive, and if the tendency of the acts complained of be injurious, so that the injury may be irreparable, he will proceed to prevent them.

Dr. Spencer states his experience of the noises from the defendant's shop, while attending the plaintiff's family, and declares his belief that it greatly interfered with his efforts to relieve his patients, and he gives his belief that it would jeopard the life of a patient, in the crisis of a fever, by preventing rest and sleep. I do not forget the admonition against using the strong arm of the chancellor, but that strength was given, and intended to be used, in proper cases, and I think this is one of them as it now stands before us. What may be made to appear on answer, pleadings, and proofs, if the case comes to that, I do not anticipate nor prejudge; it is of the case, as it is now, that I treat. I am, therefore, of opinion that the defendant should be restrained from using his tin and sheet-iron workshop, as a workshop, until further order of the Court. Let the decree for a preliminary injunction be drawn and entered on the plaintiff's giving bond, with sufficient sureties, in $1000 to the defendant, conditioned to answer in damages, in case of loss by reason of this injunction.

Supreme Court of Indiana, November Term, 1862.

JOHN ROCHE *vs.* FRANCIS WASHINGTON.*

Since the removal of the Miami Tribe of Indians from Indiana, in pursuance of their treaty with the United States in 1840, a marriage between two remaining members of the tribe, according to the native customs, will be held invalid in the courts of Indiana, as contrary to the laws of that State.

Qu. Whether the Indian tribes within the United States are in any case independent civilized nations, so as to require their marriage laws or customs to be recognised in the State Courts.

PERKINS, J.—Suit for partition instituted by Francis Washington

* We are indebted for this case to the kindness of PERKINS, J.